

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte PHILIP LEE CHILDS,  
JEFFREY MARK ESTROFF AND MICHAEL T. VANOVER

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Application No. 10/063,402

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

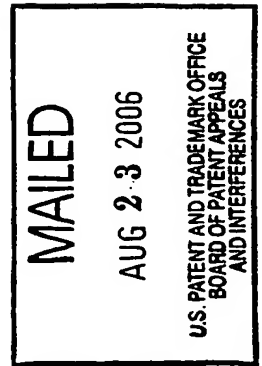
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This application was received electronically at the Board of Patent Appeals and Interferences on August 15, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing are identified below:

A review of the file indicates that on March 29, 2006, appellants filed an Appeal Brief under the rules set forth in 37 CFR § 41.37(c). However, the following items are missing:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section: . . . .

(ix) **Evidence appendix.** An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.



**(x) Related proceedings appendix.** An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

Accordingly, the Appeal Brief filed on March 29, 2006 does not comply with the new rules under 37 CFR § 41.37(c). It is required that a substitute brief be submitted that is in compliance with 37 CFR § 41.37(c). For more information on the Board's new rules see the web page entitled More Information on the Rules of Practice Before the BPAI, Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

On May 2, 2006, an Examiner's Answer was entered into the record. In the Evidence Relied Upon section, page 2, paragraph 8, the examiner has stated that "No evidence is relied upon by the examiner in the rejection of the claims under appeal." A review of the file reveals that references to Davis 6,181,803 and Batten-Carew et al. 5,968,177 were applied to the statement of rejections in the Grounds of Rejection, paragraph (9) of the examiner's answer. Before further review, the examiner must submit a corrected examiner's answer that will include in the Evidence Relied Upon section, the list of references mentioned in the statement of rejections. See the Manual of Patent Examining Procedure, (MPEP) § 1207.02. Appropriate correction is required.

Accordingly, it is

**ORDERED** that the application is returned to the Examiner for:

1) request to have the appellants submit a substitute Appeal Brief in compliance with the new rules set forth in 37 CFR § 41.37(c);

2) to issue a revised Examiner's Answer having the missing references listed under the Evidence Relied Upon section, paragraph (8); and

3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

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